Issue: PADEP's Beneficial Use General Permit allows the use of PCBs that exceed the TSCA PCB Use Authorization levels.

Background: Section 761.20(c) of the PCB regulations prohibit the distribution in commerce for use of PCBs at any concentration, other than in a totally enclosed manner, without an exemption. The distribution in commerce of PCBs at any concentration is only authorized for the purposes of disposal.

PADEP's General Permit for Beneficial Use of Regulated fill (Beneficial Use Permit -WMGR096, copy attached) allows a site to accept waste for use as construction material. See Table 1 for PCB concentrations allowed under WMGR096.

Table 1

PCB Aroclor	PADEP Beneficial Use of Regulated fill General Permit
1016	200 ppm
1221	2.5 ppm
1232	2.0 ppm
1242	62 ppm
1248	44 ppm
1254	44 ppm
1260	130 ppm
Total PCBs	484.5 ppm

The PADEP Beneficial Use of Regulated fill permit is not a Subtitle D disposal permit. The permit requires the owner to notify PADEP 10 days prior to accepting a regulated fill from a new source. ***The permit states that if the regulated fill does not exceed the concentration limits set forth in the permit that it shall cease to be waste once the regulated fill is place***. The permit does require a deed notice.

Impacts: Currently, there are five sites in Pennsylvania which have been issued a Beneficial Use permit. The list of permitted sites is attached below.

Region 3's PCB Coordinator has received calls from Region 1 and 2 PCB Coordinators inquiring about sites in their region which are proposing to send less than 50 ppm PCB waste to sites in PA which were issued a Beneficial Use of Regulated Fill permit.

Examples:

- May 2016 – Region 2 site proposing to send less than 50 ppm PCB waste to Hazelton site
- June 2016 – Region 2 site proposing to send less than 50 ppm PCB waste to Coplay Aggregate site
- October 2016 – Region 1 site proposing to send less than 50 ppm PCB waste to Northface Business Park site
- November 18, 2016 – PADEP NE Office was notified that a NJ site wishes to send less than 50 ppm waste to Hazelton site

Pennsylvania Sites Issued a Beneficial Use of Regulated Fill Permit under General Permit WMGR096

Permit Number	Site Name	Site Address	Client Name	Client Address	Issue Date
WMGR096NE001	Hazleton Act 2 Remediation/Reclamation Project Site	Route 924 Mined Lands, Hazleton, PA 18201	Hazleton Creek Properties, LLC	4000 4th Ave, Moosic, PA 18507	12/23/2013
WMGR096NE003	Northface Business Park, Former NJ Zinc Co. West Plant	1120 Mauch Chunk Road, Palmerton, PA 18701-1110	Phase III Environmental	405 Watson Park Blvd, Lehighton, PA 18235	12/23/2013
WMGR096NE004	Bethlehem Steel Slag Processing Site –Waylite Parcels 2 and 3	S. Easton Road, Bethlehem, PA	Bethlehem Earth, LP	491 Old York Road, Jenkintown, PA 19046	7/28/2014
WMGR096NE005	Coplay Aggregates	5101 Beekmantown Road, Whitehall, PA 18052	Coplay Aggregated, Inc.	5101 Beekmantown Road, Whitehall, PA 18052	7/2/2015
WMGR096SW003	Carrie Furnace Redevelopment	West Braddock Avenue, Pittsburgh, PA 15219	Allegheny County Redevelopment Authority		12/23/2013

Information obtained from PADEP's eFACTS website. WMGR096 General Permit was reissued on 12/23/2013. WMGR096 references Management of Fill Document 258-2182-773.

Prepared by Kelly Bunker - 11/22/16

Since June 2017, shipments of PCB-containing materials with PCB concentrations greater than 2 ppm have been shipped to the facilities having a WMGR096 Permit are documented in the following table:

Application Number	Generator Name and Address	Beneficial Use (BU) or Clean Fill (CF)	Site receiving PCB Waste	Highest PCB Concentration	Date of PADEP Email Notifying EPA
New Source #2617	PANYNJ Greenville Yard, 20 Colony Road, Jersey City, NJ	BU	Bethlehem Earth, LP S. Easton Road, Bethlehem, PA	4.7 ppm	12/14/17
New Source #2603	110 South River Street, Hackensack, NJ	BU	Phase III Environmental 1120 Mauch Chunk Road, Palmerton, PA 18701-1110	8 ppm	12/7/17
New Source	JSF Henderson Road, King of Prussia, PA	BU	Hazleton Act 2 Remediation/Reclamation Project Site Route 924 Mined Lands, Hazleton, PA 18201	6.6 ppm	11/14/17
New Source	Warehouse Lane and Main Street, West Chester NY	BU	Phase III Environmental 1120 Mauch Chunk Road, Palmerton, PA 18701-1110	3.65 ppm	11/14/17
New Source #2518	85-89 Jane St. NY, NY	BU	Hazleton Act 2 Remediation/Reclamation Project Site Route 924 Mined Lands, Hazleton, PA 18201	7.73 ppm	10/10/17
New Source #2356	Gowanus Village Brooklyn, NY	BU	Hazleton Act 2 Remediation/Reclamation Project Site Route 924 Mined Lands, Hazleton, PA 18201	20 ppm	6/22/17
FP-001 #2340	Barnum Landing Bridgeport, CT	CF	Lydon Lane and School St, Moosic, PA	3.1 ppm	6/21/17
FP-001 #2341	Barnum Landing Bridgeport, CT	CF	Hazleton Act 2 Remediation/Reclamation Project Site Route 924 Mined Lands, Hazleton, PA 18201	3.1 ppm	6/21/17
FP-001 #2335	Glassworks Aberdeen, NJ	CF	Lydon Lane & School St., Moosic, PA	5.059 ppm	6/20/17
FP-001 #2336	Glassworks Aberdeen, NJ	CF	Hazleton Act 2 Remediation/Reclamation Project Site Route 924 Mined Lands, Hazleton, PA 18201	5.059 ppm	6/20/17

New Source #2191	425 Union Road West Islip, NY	BU	Hazleton Act 2 Remediation/Reclamation Project Site Route 924 Mined Lands, Hazleton, PA 18201	6.8 ppm	3/21/17

On January 3, Clean Earth, Bethlehem, PA notified EPA via E-mail that another new source submittal for beneficial use had been submitted to PADEP and the material is slated for use at the Clean Earth Bethlehem facility as construction material. The PCB containing material is being generated in the State of New Jersey by DRP Gibbstown Logistics. The receiving facility has requested EPA approval to accept this material. Deliberative Process & Attorney Client Ex. 5

Deliberative Process & Attorney Client Ex. 5

By definition, if this were disposal, we would call this PCB remediation waste since as stated in 761.50(b)(3)(iii) "the owner or operator of a site containing PCB remediation waste has the burden of proving the date that the waste was placed in a land disposal facility, spilled. or otherwise released into the environment, and the concentration of the original spill". They don't know the concentration of the original spill and so they should be calling it PCB remediation waste even if the dredge material is less than 50 ppm.

But, in this case, it does not matter what the generator wants to call it, the issue is that the facility receiving the material is USING the material (i.e. Beneficial Use Permit) not disposing of the material. The PCB regulations prohibits the USE of any material having 2 ppm or greater of PCBs.

PCB remediation waste, by regulation, must be disposed of at a TSCA-approved facility that has a permit to dispose of PCB remediation waste.

PCB Use – Relevant Statutory and Regulatory (Federal and State) Language

Statutory Language

The preemption authority of Section 18 of TSCA prohibits the delegation of the PCB program to the State.

Federal Regulatory Language

761.3 Definitions

PCB and PCBs means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. Refer to §761.1(b) for applicable concentrations of PCBs, PCB and PCBs as contained in PCB Items are defined in §761.3

PCB remediation waste means waste containing PCBs as a result of a spill, release, or other unauthorized disposal, at the following concentrations: Materials disposed of prior to April 18, 1978, that are currently at concentrations ≥50 ppm PCBs, regardless of the concentration of the original spill; materials which are currently at any volume or concentration where the original source was ≥500 ppm PCBs beginning on April 18, 1978, or ≥50 ppm PCBs beginning on July 2, 1979; and materials which are currently at any concentration if the PCBs are spilled or released from a source not authorized for use under this part. PCB remediation waste means soil, rags, and other debris generated as a result of any PCB spill cleanup, including, but not limited to:

(1) Environmental media containing PCBs, such as soil and gravel; dredged materials, such as sediments, settled sediment fines, and aqueous decantate from sediment.

(2) Sewage sludge containing <50 ppm PCBs and not in use according to §761.20(a)(4); PCB sewage sludge; commercial or industrial sludge contaminated as the result of a spill of PCBs including sludges located in or removed from any pollution control device; aqueous decantate from an industrial sludge.

(3) Buildings and other man-made structures (such as concrete floors, wood floors, or walls contaminated from a leaking PCB or PCB-Contaminated Transformer), porous surfaces, and non-porous surfaces.

Quantifiable Level/Level of Detection means 2 micrograms per gram from any resolvable gas chromatographic peak, i.e. 2 ppm.

Totally enclosed manner means any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs.

761.20 Prohibitions and exceptions

(a) No persons may use any PCB, or any PCB item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under §761.30, except that...

(c) No persons may process or distribute in commerce any PCB, or PCB Item regardless of concentration for use within the United States or for export from the United States without an exemption, except that an exemption is not required to process or distribute in commerce PCBs or PCB Items resulting from an excluded manufacturing process as defined in 761.3 or process or distribute in commerce recycled PCBs as defined in 761.3, or to process or distribute in commerce excluded PCB products as defined in 761.3, provided that all applicable conditions of 761.1(f) are met.

(c)(2) Any person may process and distribute in commerce for disposal PCBs at concentrations of ≥50 ppm, or PCB Items with PCB concentrations of ≥50 ppm, if they comply with the applicable provisions of this part.

(c)(4) PCBs, at concentrations of less than 50 ppm, or PCB Items, with concentrations of less than 50 ppm, may be processed and distributed in commerce for purposes of disposal.

Pennsylvania Regulatory Language

According to 25 Pa Code 287.1, the definition of *PCB-containing waste is*—Solid waste containing PCBs in the following concentrations:

(i) More than 4 parts per million, but less than 50 parts per million.

(ii) 50 parts per million or more, if the following are met:

(A) Regulations promulgated under the Toxic Substances Control Act (15 U.S.C.A. § § 2601—2629) provide that the waste may be disposed of as municipal solid waste.

(B) The waste is not a hazardous waste under the act.

(C) The Resource Conservation and Recovery Act (42 U.S.C.A. § § 6901—6991) does not impose specific standards or requirements for the disposal of the waste.